IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

C.R.P.Nos.2173 to 2175 of 2004
and 358 & 359 of 2005
and
C.M.P.Nos.20912 to 20914 of 2004
and 3401 & 3402 of 2005

CRP.No.2173 of 2004

1.P.Bakkiammal
2.P. Palani
3.P. Mohanarajan
4.P. Vijayakumar
5.M.S. Soundararajan
6.M.S. Kumaran
7.M. Kalavathy
8.S. Meena
9.Minor Preethi
10.Minor Raja Sundaram
Minors represented by Mother and Guardian
S. Meena of 8th Respondent
11.C. Selvi
12.Minor Kaviya 15 years
13.Minor C. Vivek aged 13 years
(R.11 LRs of R4 deceased and R12 and R13
are minors rep by mother and guardian
C. Selvi of 11th respondent ...
Petitioners/respondents/Defendants 1
to 3, 5 to 14

VS

1. R. Ramalakshmi
2. R. Mohana
3. A. Pasupathy
4. Miss. B. Sudha
5.B. Gurubagiam
6.K. Malathy
7.M. Pannerselvam
8.M.K. Ayyanar
9.A. Muthulingam
10.N. Amaravathy
11.S.V. Amudhan

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12.A. Jothi
13.M. Mariammal
14.S. Ramalingam
15.G. Siva Gurunathan
16.B. Gurubagiyam
17.N. Kalimuthu
18.K. Annamalai
19.Thenmozhi
20.A.G. Kadarakarai
21.K. Periyasamy
22.S. Vallimyl
23.K. Balasikhamani
24.Sudhir Choudhry
25.Ponnam Choudry
26.Nisha Choudry
27.Sakunthala Choudry
28.Pushpa Choudry
29.Chanda Choudry
30.Ashok Choudry
31.Siddartha Choudry
32.Prix Trade & Agencies (P) Ltd.,
5-B Clive Ghat Street,
Calcutta- 700 001.
33.A.S. Overseas (P) Ltd.,
having office at
5B Clive Ghat Street,
Calcutta - 700 001.
34.K. Senthilkumar
35.M. Gnandeepam
36.Jothi
37.N.E. Narayanasamy
38.K. Arunachalam
39.A.K. Shanmugavelan
40.K. Sasikala
41.K.B. Kumar ... Respondents/respondents/Proposed Defendants

C.R.P.No.2174 of 2004

1.P. Bakkiammal
2.P. Palani
3.P. Mohanarajan
4.P. Vijayakumar
5.M.S. Soundararajan
6.M.S. Kumaran
7.M. Kalavathy
8.S. Meena
9.Minor Preethi
10.Minor Raja Sundaram
Minors represented by Mother

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and Guardian S. Meena of 8th Respondent
11.C. Selvi
12.Minor Kaviya 15 years
13.Minor C. Vivek aged 13 years
(R.11 LRs of R4 deceased and R12 and R13
are minors rep by mother and guardian
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9.A. Muthulingam
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11.S.V. Amudhan
12.A. Jothi
13.M. Mariammal
14.S. Ramalingam
15.G. Siva Gurunathan
16.B. Gurubagiyam
17.N. Kalimuthu
18.K. Annamalai
19.Thenmozhi
20.A.G. Kadarakarai
21.K. Periyasamy
22.S. Vallimyl
23.K. Balasikhamani
24.Sudhir Choudhry
25.Ponnam Choudry
26.Nisha Choudry
27.Sakunthala Choudry
28.Pushpa Choudry
29.Chanda Choudry
30.Ashok Choudry
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33.A.S. Overseas (P) Ltd.,
having office at
5B Clive Ghat Street,
Calcutta - 700 001.
34.K. Senthilkumar

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35.M. Gnandeepam
36.Jothi
37.N.E. Narayanasamy
38.K. Arunachalam
39.A.K. Shanmugavelan
40.K. Sasikala
41.K.B. Kumar ... Respondents/respondents/Proposed Defendants

C.R.P.No.2175 of 2004

1.P.Bakkiammal
2.P. Palani
3.P. Mohanarajan
4.P. Vijayakumar
5.M.S. Soundararajan
6.M.S. Kumaran
7.M. Kalavathy
8.S. Meena
9. Minor Preethi
10. Minor Raja Sundaram
Minors represented by Mother and Guardian S. Meena of 8th Respondent
11. C. Selvi
12.Minor Kaviya aged 15 years
13. Minor C. Vivek aged 13 years
(R.11 LRs of R4 deceased and R12 and R13
are minors rep by mother and guardian
C. Selvi of 11th respondent ...
Petitioners/respondents/Defendants 1 to 3, 5 to 14

VS

1. R. Ramalakshmi
2. R. Mohana ... Respondents / Petitioner/ Plaintiff

C.R.P.No.358 of 2005

1.Sudhir Choudhry
2.Ponnaam Choudhry
3.Nisha Choudhry
4.Sakunthala Choudhry
5.Pushpa Choudhry
6.Chanda Choudhry
7.Ashok Choudhry
8.Siddarth Choudhry

9.Prix Trade & Agencies (P) Ltd.,

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5-B Cliveghat Street,
Calcutta - 700 001.

10.A.S. Overseas (P) Ltd.,
having office at
5-B Cliveghat Street,
Calcutta - 700 001.
(1 to 10 rep by power of Attorney
Mr. Pawan Chowdhry) ... Respondents 22-31/
Proposed
Defendants/Petitioners

(Cause title accepted vide
order of Court dated 24.2.2005 and
made in C.M.P.Nos.3001 & 3002/05)

Vs.

1.R.Ramalakshmi
2.R. Mohana
3.P. Bakkiammal
4.P. Palanivel
5.P. Mohanarajan
6.Chandrasekara Pandian @ Sehar
7.P. Vijayakumar
8.M.S. Soundararajan
9.M.S. Kumaran
10.M. Kalavathy
11.S. Meena
12.Minor Preethi
13.Minor Raja Sundaram
(Respondents 12 & 13 minor
rep by Guardian mother S. Meena)
14.A. Pasupathy
15.Miss. B. Sudha
16.B. Gurubagiam
17.K. Malathy
18.M. Panneerselvam
19.M.K. Ayyanar
20.A. Muthulingam
21.N.Amaravathy
22.S.V. Amudhan
23.A. Jothy
24.M. Mariammal
25.S. Ramalingam
26.G. Siva Gurunathan
27.B. Gurubaggiyam
28.N. Kalimuthu
29.K. Annamalai
30.Thenmozhi
31.A.G. Kadarkarai
32.K. Periyasamy

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33.S. Vallimyl
34.Balasigamani
35.K. Senthilkumar
36.M. Gnanadeepa
37.Jothi
38.N.E. Narayanasamy
39.K. Arunachalam
40.A.K. Shanmugavelan
41.K. Sasikala
42.K.B. Kumar ... Respondents 1 to 21 & 32 to 39/ proposed Defendants/ Respondents

(No notice necessary
to Respondents 3 to 42 as
they are included for the
purpose of cause title and
no relief sought for
against them)

C.R.P.No.359 of 2005

1.Sudhir Choudhhry
2.Ponnaam Choudhry
3.Nisha Choudhry
4.Sakunthala Choudhry
5.Pushpa Choudhry
6.Chanda Choudhry
7.Ashok Choudhry
8.Siddarth Choudhry
9.Prix Trade & Agencies (P) Ltd.,
5-B Cliveghat Street,
Calcutta - 700 001.
10.A.S. Overseas (P) Ltd.,
having office at
5-B Cliveghat Street,
Calcutta - 700 001.
(1 to 10 rep by power of Attorney
Mr. Pawan Chowdhry) ... Respondents 22-31/ Proposed Defendants/Petitioners

(Cause title accepted vide
order of Court dated 24.2.2005 and
made in C.M.P.Nos.3001 & 3002/05)

Vs.

1.R.Ramalakshmi
2.R. Mohana
3.P. Bakkiammal
4.P. Palanivel
5.P. Mohanarajan

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6.Chandrasekara Pandian @ Sehar
7.P. Vijayakumar
8.M.S. Soundararajan
9.M.S. Kumaran
10.M. Kalavathy
11.S. Meena
12.Minor Preethi
13.Minor Raja Sundaram
(Respondents 12 & 13 minor
rep by Guardian mother S. Meena)
14.A. Pasupathy
15.Miss. B. Sudha
16.B. Gurubagiam
17.K. Malathy
18.M. Panneerselvam
19.M.K. Ayyanar
20.A. Muthulingam
21.N.Amaravathy
22.S.V. Amudhan
23.A. Jothy
24.M. Mariammal
25.S. Ramalingam
26.G. Siva Gurunathan
27.B. Gurubaggiyam
28.N. Kalimuthu
29.K. Annamalai
30.Thenmozhi
31.A.G. Kadarkarai
32.K. Periyasamy
33.S. Vallimyl
34.Balasigamani
35.K. Senthilkumar
36.M. Gnanadeepa
37.Jothi
38.N.E. Narayanasamy
39.K. Arunachalam
40.A.K. Shanmugavelan
41.K. Sasikala
42.K.B. Kumar ... Respondents 1 to 21 & 32 to 39/ proposed Defendants/ Respondents

(No notice necessary
to Respondents 3 to 42 as
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PRAYER IN ALL C.R.Ps.: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order 1. made in

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I.A.No.6456 of 2002 in O.S.No.4634 of 1999 dated 31.08.2004, (in C.R.P.No.2173/04) 2. I.A.No.6457 of 2002 in O.S.No.4634 of 1999 dated 31.08.2004 (in C.R.P.No.2174/04) 3. I.A.No.3249 of 2001 in O.S.No.4634 of 1999 dated 31.08.2004 in C.R.P.No.2175/04 4. I.A.No.6457 of 2002 in O.S.No.4634 of 1999 dated 31.08.2004 (in C.R.P.No.358/2005) and I.A.No.6456 of 2002 in O.S.No.4634 of 1999 dated 31.08.2004 respectively on the file of the Court of the Additional District Judge, Fast Track Court III, Chennai-1.

For Petitioners in
C.R.P.Nos.2173 to 2175 /04 : Mr.S.Vijayakumar
C.R.P.Nos.358 & 359 of 2005 : Mr.Venkatachalapathy, S.C., for Mr.M. Sriram

For Respondents R1 & R2 : Mr.S.V.Jayaraman, S.C. For Mr.R.Chandrasudan & Mr.Thangasamy
For Respondent R38 : Mr.T.R.Ravi for
For Respondent 37
Mr.G.Ilamurugan

O R D E R

The defendants in the suit are revision petitioners in C.R.P.No.2173 to 2175 of 2004 and the C.R.Ps. are filed under Article 227 of the Constitution of India. The proposed parties in the suit are the petitioners in C.R.P.Nos.358 and 359 of 2005. The plaintiffs, who are the 1st and 2nd respondents in the revisions, have filed the suit in O.S.No.4634 of 1999 for partition claiming 1/4th share in the suit properties, which consist of 5 items. The defendants 1 to 11, who are the revision petitioners in C.R.P.No.2173 to 2175 of 2004, have filed the written statement. The suit filed by the sisters against the brother and legal heirs. The plaintiffs have filed I.A.No.6456 of 2002 in O.S.NO.4634 of 1999 for impleading proposed parties as defendants 12 to 50 on the basis that they are the transferees of the properties belonging to the partnership firm, created by their father S.A.Periyasamy Nadar and stating that the defendants have alienated the said properties, which were notified under the Land Acquisition Act, 1894. The alienation, according to the plaintiffs is to the extent of 26.76 acres stated in the A Schedule to the petition and 7.94 acres in the B Schedule of the petition. They have also filed I.A.No.6457 of 2002 for an injunction from alienating the said properties. That apart, the plaintiffs have also filed I.A.No.3249 of 2001 in the said suit for a direction against the first respondent / first defendant to furnish details or to produce the copies of sale deeds with regard to the said Schedule A and B properties mentioned in the petition.

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2. The said petitions were opposed by the defendants stating that the plaintiffs were aware of the said properties and they have executed release deed realizing that they have no right over the properties and the plaintiffs have also purchased the portion of the properties and therefore, they were aware of the land acquisition proceedings, in which notices have been sent to them also. The said petitions for impleading in I.A.No.2173 of 2004 has been allowed, against which the defendants, who are respondents 1 to 3 and 5 to 14 have filed C.R.P.No.2173 of 2004. Likewise, I.A.No.6457 of 2002 praying for an order of injunction was also allowed, against which they have filed C.R.P.No.2174 of 2004. The other application in I.A.No.3249 of 2001 for a direction to furnish details and produce the copies of sale deed was also allowed, against which the C.R.P.No.2175 of 2004 has been filed by them. Likewise the purchasers, who have been impleaded against whom an order of injunction has been passed by the Trail Court in I.A.No.6456 of 2002 and I.A.No.6457 of 2002 have filed C.R.P.No.358 and 359 of 2004.

3. It is the case of the revision petitioners that the said two properties mentioned in Schedule A and B of the Interlocutory Applications filed by the plaintiffs, were not available for partition and it was due to that reason, even though in the suit notice given on behalf of the plaintiffs, the same was not included. Further, since all the sales have taken place as early as in the year 1995 much before the filing of the suit which was filed in the year 1999, the plaintiffs have voluntarily left out the said properties.

4. It is the further case of the petitioners as submitted by the learned counsel appearing for the petitioners that since admittedly the land acquisition proceedings in respect of these properties have been completed and the Division Bench of this Court has also confirmed the acquisition proceedings, the properties are not available for partition. Further on earlier occasion when one of the revision petitioners have filed revision before this Court in C.R.P.No.2019 and 2113 of 2001 against the order of impleading one of the alienees, this Court while allowing the revision by order dated 15.03.2002 has held that since pending suit the alienation is stated to have taken place, the principle of lis pendens will apply against the said transactions.

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5. In view of the same the present application for impleading ought not to have been allowed. He would further submit that when the suit filed as early as in the year 1999 and the petitioners have filed written statement in 2000 itself, the present applications have been filed in 2002, which is belated and the Trial Court has not taken the same into consideration. The learned counsel for the petitioners would submit that the application for injunction in I.A.No.6457 of 2002 has been filed under Section 151 of C.P.C. when a provision under Order 39 is available. He would also submit that

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when the properties are not available, since acquisition proceedings have been completed, there is absolutely no reason for the Trial Court in directing the defendants to disclose the particulars about the sale transactions.

6. While adopting the said arguments advanced by the petitioners in the C.R.P.No.2173 to 2175 of 2004 Mr.Venkatachalapathy, learned Senior Counsel appearing for the petitioners in C.R.P.No.358 & 359 of 2005, who are the purchasers would submit that the acquisition proceedings have been completed by the Division Bench judgement dated 13.09.2006 in Writ Appeal No.1641 to 1651 of 2003, while admitting that the purchasers are still in possession of the property and in any event, it is the question of compensation that is involved.

7. On the other hand, Mr.S.V.Jayaraman, learned Senior Counsel appearing for the respondents 1 and 2, who are the plaintiffs would submit that the order of this Court in C.R.P.No.2019 and 2113 of 2001 was relating to the alienation made after the present suit was filed and therefore, this Court has held that those transfers will be affected by lis pendens. Whereas in the present case the properties were alienated much before filing of the suit in 1992, 1994 and 1995 and inasmuch as the claim is not barred by the limitation, the impleading petition ordered by this court and consequently, injunction and direction are perfectly in order. He would also submit that it was only after the defendants filed the written statement in July 2000, for the first time, the plaintiffs came to know about the alienation and it is to obtain necessary particulars, it has taken some time and immediately thereafter the petitions were filed.

8. According to the learned counsel for the respondents since the alienations were made prior to filing of the suit the alienees are the proper and necessary parties. He would also submit that even if possession is taken from the alienees the claim of the plaintiffs will continue, since they are entitled for making a claim in the award. Therefore, according to him the alienation is not an answer for the claim. The learned counsel also substantiate his contention that the alienees are the necessary parties by relying upon the judgement of this Court reported in 2002(3) LW 472. He would also submit that even in respect of the alienee pendente lite, who is bound by the final decree can be brought on record under Order 1, Rule 10 as per the Judgement of the Hon'ble Apex Court reported in 2005(4) CTC 47. However, in the present case since admittedly the alienation is before the filing of the suit, the alienees are the proper and necessary parties.

9. I have heard the learned Senior counsel for the petitioners as also the learned Senior counsel for the respondents and perused the entire records.

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10. As far as the impleading petition in I.A.No.6556 of 2002 in O.S.No.4634 of 1999 is concerned, the petitions are filed specifically on the ground that the alienations have been made before filing of the suit, which fact has not been denied by the defendants. The Trial Court has also found that the sale deeds were executed on 03.02.1994, which is clearly before the filing of the suit, since the suit itself was filed only on the year 1999. Therefore, the reliance placed on the judgement of this Court in C.R.P.No.2019 and 2113 of 2001, which relates to a case where the transfer was effected after the suit was filed and therefore correctly held that Section 52 of the Transfer of Property Act, will apply since such transaction would be hit by the doctrine of lis pendens.

11. On the other hand, in the present case transfers were effected before filing of the suit and it is the specific case of the plaintiffs that it was only after the written statement was filed by the defendants in July 2000 from the averments made therein they came to know that the transfers were effected and thereafter the petition for impleading was filed. It is in those circumstances relevant to point out the decision of this Court rendered in R.Anitha and others Vs. Ramakrishnan and others reported in 2002(3) LW 472. That was a case wherein the transfer effected before filing of the suit but the transferees were omitted, to be included and in such circumstances, it was held that without the transferees presence the issues between the parties could not effectively and completely adjudicated upon. While narrating about the implication of Order 1 Rule 10 of C.P.C., this Court has held in the following terms:

> "10. Needless to say, the jurisdiction vested on the Court under Order 1, Rule 10 of Code of Civil Procedure to implead the third party has to be exercised judiciously. In the instant case, admittedly the proposed parties have purchased a part of the property even before the filing of the suit, but omitted to be added as parties, and hence, they have to be necessarily added as parties to the final decree proceedings, without whose presence the issues between the parties could not be effectually and completely adjudicated upon. Therefore, the order of the lower court refusing to add the proposed parties as respondents 4 to 7 in the final decree proceedings cannot be sustained, but is liable to be set aside. The court below is directed to permit the petitioners herein to add the proposed parties as respondents 4 to 7 in the final decree proceedings, proceed with the matter and dispose it of in accordance with law."

12. In fact even in respect of the alienees pending suit, the Supreme Court in a later decision rendered in Amithkumar Shah and

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another Vs. Faritha Kattur and another reported in 2005(4) CTC 47 has held that such transferee can be added as party if his interest in the subject matter of the suit is substantial and not peripheral. That was the decision rendered while dealing with Order 1 Rule 10 of C.P.C. and Section 52 of the Transfer of Property Act, holding that even though the transferee is not as a matter of right to be made as a party in the suit it is the discretion of the Court if the transferee has a substantial interest in the subject matter. The relevant portion of the judgement of the Hon'ble Apex Court reads as follows:

> "16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant, the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order 22, Rule 10 an aliencee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised, an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

13. That was also the decision of this Court in another case rendered in P.R.Nallappa Vs. P.K.Sreenivas and others reported in 2003(3) MLJ 711. Therefore, it is true that the impleading of the parties even though may not be a matter of right but is discretion, the same must be for the purpose of effective and complete adjudication of the dispute. As I have stated earlier, in the wordings of the Hon'ble Supreme Court when a party is having a substantial interest and not a peripheral interest, he can be certainly impleaded as a party.

14. Applying the said doctrine which is well established, on the facts of this case even though it is true that in respect of the properties which was transferred have been acquired and acquisition

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proceedings have been completed as it is confirmed by the Division Bench of this Court, as stated by the transferees they are still in possession and in any event there is yet a decision to be rendered in respect of the payment of compensation and therefore it cannot be said that the alienees have no right or interest over the subject matter of the issue.

15. Therefore, I am of the considered view that the impleading of the alienees which has been effected by the learned Trial Judge is not antithesis to the legal principles established. In view of the same the order of the Trial Court in impleading the transferees is valid in law and consequently C.R.P.No.2173 of 2004 and 359 of 2005 stand dismissed.

16. As far as the order of injunction granted by the Trial Court in I.A.No.6457 of 2002, even though it is true that such application for injunction has been filed under Section 151 C.P.C. and not under Order 39, it remains a fact that the defendants have already transferred the said properties mentioned in the Schedule B of the petitions and the land acquisition proceedings have been completed as it is seen that the purchasers have approached this Court on the writ side, while the writ petition filed by the transferees were allowed, the appeals filed by the Tamil Nadu Housing Board against the transferees have been allowed by the Division Bench of this Court in Writ Appeal No.1641 of 2003 etc., batch thereby upholding the validity of the land acquisition proceedings and in such circumstances there is no question of granting any injunction against the defendants. Mere avoiding of multiplicity of proceedings cannot be the ground of injunction unless the order of injunction must have some purpose.

17. In view of the same the order of injunction granted by the Trial Court in I.A.No.6457 of 2002 in O.S.No.4634 of 1999 is set aside. With the result the C.R.P.No.2174 of 2004 and C.R.P.No.358 of 2005 stand allowed.

18. As far as the direction petition filed by the plaintiffs in I.A.No.3249 of 2001 for a direction to disclose the contents of the documents, for the forgoing reasons, I am of the considered view that such direction is not maintainable apart from not being necessary, since the alienation is not disputed by the defendants. In view of the same the order in I.A.No.3249 of 2001 in O.S.No.4634 of 1999 is set aside and C.R.P.No.2175 of 2004 stands allowed, with the result:

1) C.R.P.No.2173 of 2004 and C.R.P.No.359 of 2005 filed against the order of impleading in I.A.No.6456 of 2002 in O.S.No.4634 of 1999 on the file of the Additional District Judge, Fast Track Court III, Chennai stand dismissed.

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2) C.R.P.No.2174 of 2004 and C.R.P.No.358 of 2005 filed against the order of injunction in I.A.No.6457 of 2002 in O.S.No.4637 of 1999 on the file of the Additional District Judge, Fast Track Court III, Chennai stand allowed.

3) C.R.P.No.2175 of 2004 filed against the order of direction in I.A.No.3249 of 2001 in O.S.No.4634 of 1999 on the file of the of the Additional District Judge, Fast Track Court III, Chennai stands allowed. Since the suit is of the year 1999, the trial court is directed to dispose of the suit expeditiously, within three months and report to this Court.

No Costs. Consequently, the connected C.M.Ps. are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

nbj

To

1. The Additional District Judge,
Fast Track Court, No.III, Chennai.1

2. The Registrar
City Civil Court,
Chennai.

3. The VII Additional Judge,
City Civil Court, Chennai.

4. The Section Officer,
CRP Filing Section (MF Section)
Judicial Department, High Court,
Madras. (For watching the report)

3 ccs to Mr.S. Vijayakumar, Advocate, Sr. 7236, 7235 & 7234
1 cc to MR.R.C. Manoharan,Advocate, Sr.7001
1 cc to Mr.R. Chandrasudan, Advocate, Sr. 7002
1 cc to mr.M. Sriram, Advocate, Sr.7034

C.R.P.PD.Nos.
2173 to 2175 of 2004
and 358 & 359 of 2005

PV (CO)
kk 15/2

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